

February 16, 2015

**DECISION MEMORANDUM**

**FROM:** Carolyn Minnich  
**TO:** Michael E. Scott, Bruce Nicholson  
**Subject:** Former R. H Bouligny Site  
2320 North Davidson  
Charlotte, Mecklenburg County  
Brownfields Project No 07005-03-060

In October 2014, North Carolina Brownfields Program (NCBP) was contacted by Susan Cooper Womble Carlyle Sandridge & Rice, LLLP on behalf of Eric Applefield of Southern Apartment Group to review the recorded Notice of Brownfields Property on the above referenced site. On December 20, 2004, the Notice was recorded at the Mecklenburg County RoD. No major redevelopment has occurred on the property to date.

On November 5, 2014, a meeting was held to review the project and proposed redevelopment. Upon review of the recorded Notice, they expressed issues with difficulty developing the property with a few of the existing land use restrictions as written. In November 2014, the property owner, NoDa At 27<sup>th</sup> Street, LLC, sent a letter requesting the receptor survey LUR be removed. A Limited Site Investigation dated November 21, 2014 was prepared by Terracon with current well survey. On February 12, 2015, a second correspondence via email was received agreeing to the draft LUR Amendment letter. The email stated the following:

**From:** Greg Godley [mailto:gjgodley@gmail.com]  
**Sent:** Thursday, February 12, 2015 4:07 PM  
**To:** Eric Applefield; Carolyn Minnock; Minnich, Carolyn  
**Cc:** Shane Seagle; Andrew Klenk; Beau McIntosh  
**Subject:** Re: FW: Bougliny - EMP and LURs

Carolyn,

As the Member / Manager for NoDa at 27th Street I agree with attached document associated with the NC Brownfields Agreement. please do not hesitate to contact me if you need any additional information.

Sincerely,

Greg Godley  
NoDa at 27th Street, LLC  
1001 Elizabeth Ave Suite 1D  
Charlotte, NC 28204

Following review and approved by DENR, a letter will be sent to Mr. David Granberry of Mecklenburg County Register of Deeds to amend the Notice. This letter will be agreed upon by both parties, NCDENR and Noda At 27<sup>th</sup> Street, LLC. A fee of \$500 has been assessed for the amendment revisions. The following outline the changes:

Contaminated Media:

The groundwater has been impacted at the site from historical practices. Volatile Organic Compounds (VOCs) were detected at the property above unrestricted use levels (2L). Due to the presence of VOCs in the groundwater indoor air is potentially contaminated as well.

Potential Receptors:

The site is located in a mixed use area with commercial, industrial, and residential uses. Potential receptors include workers (office/construction/outdoor/indoor) and trespassers.

Review of Land Use Restrictions

*The following LUR will remain with NO revisions*

1. No use other than the following may be made of the Brownfields Property: mixed-use development with industrial, commercial, retail and residential uses.

*The following LUR will remain with NO revisions*

2. Surface water and underground water at the Brownfields Property may not be used for any purpose without the approval of DENR or its successor in function.

*The following LUR will remain with NO revisions*

3. No activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) may occur on the Brownfields Property without prior sampling and analysis of groundwater to the satisfaction of DENR or its successor in function in any areas proposed for such activities, and submittal of the analytical results to DENR or its successor in function. If such results disclose to DENR or its successor in function contamination in excess of North Carolina's groundwater quality standards, the proposed activities may not occur without the approval of DENR or its successor in function on such conditions as DENR or its successor in function imposes, including at a minimum legal approval of plans and procedures to protect public health and the environment during the proposed activities.

*The following LUR will remain with NO revisions*

4. No mining may be conducted on or under the Brownfields Property, including, without limitation, extraction of coal, oil, gas or any other minerals or non-mineral substances.

*This restriction is no longer necessary.*

~~5. No basements may be constructed on the Brownfields Property unless they are, as determined by DENR or its successor in function, vented in conformance with applicable building codes.~~

*The following LUR will remain with NO revisions*

6. None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed above in paragraph (2), may be used or stored at the Brownfields Property without the prior approval of DENR or its successor in function, except in de minimis amounts for cleaning and other routine housekeeping activities.

*The following LUR will remain with NO revisions*

7. The Brownfields Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the approval of DENR or its successor in function.

*This restriction is no longer necessary.*

~~8. The Brownfields Property may not be used for agriculture, grazing, timbering or timber production.~~

*Land Use Restriction 9 is revised to read:*

9. The Brownfields Property may not be used as a playground, or for child care centers or schools, without the approval of DENR or its successor in function.

*This restriction is no longer necessary.*

~~10. The Brownfields Property may not be used for kennels, private animal pens or horse riding.~~

*Land Use Restriction 11 is revised to read the following. This is consistent with our current language. The developer did not like the reference to Standard 62 of the American Society of Heating, Refrigeration and Air-Conditioning. The revised LUR puts the burden on the PE designing and certifying the system is compliant.*

11. As to all new construction and conversion of existing structures to residential, ~~each occupied space on the Brownfields Property shall be mechanically ventilated with outdoor air in conformance with the most current version of Standard 62 of the American Society of Heating, Refrigerating and Air-Conditioning Engineers or in accordance with U.S. EPA guidance on radon-resistant construction techniques for new residential construction.~~ defined as those depicted on the plat component of the Notice, they may not be occupied until:

i. the building would be sufficiently distant from the Property's groundwater and/or soil contamination that the building's users, public health and the environment will be protected from risk from vapor intrusion related to said contamination; or

ii. vapor mitigation measures are installed or implemented to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's professional seal on a report that includes photographs and a description of the installation and performance of said measures. All vapor mitigation measures shall be installed or implemented in accordance with a plan approved in writing by DENR in advance, including methodology(ies) for demonstrating performance of said measures.

*The following LUR will remain with NO revisions*

12. No party conducting environmental assessment or remediation at the Property at the direction of, or pursuant to a permit or order issued by, DENR may be denied access to the Property for purposes of conducting such assessment or remediation.

*Land Use Restriction 13 is revised to read the following. This is consistent with our current verbiage and requires updated on vapor. In November 2014, a well survey was completed. One abandoned well located at 2201 North Davidson was found. It was previously used for irrigation purposed. Mecklenburg County currently has a well restriction in the area and would not permit any future wells to be installed. Surrounding properties are connected to municipal water supplies.*

13. During January of each year after this Agreement becomes effective, the then current owner of any part of the Brownfields Property shall submit a notarized Land Use Restrictions Update to DENR or its successor in function, and to the chief public health and environmental officials of Mecklenburg County, certifying that this Notice remains recorded at the Mecklenburg County Register of Deeds office, and that the land use restrictions on the Brownfields Property are being complied with and stating to the best of its actual knowledge: In addition, ~~no later than fourteen (14) days after every fifth anniversary of the effective date of this Agreement, the then current owner of any part of the Brownfields Property shall submit a survey of well receptors within 1,500 feet of the Brownfields Property to DENR or its successor in function. If the Brownfields Property comprises more than one parcel at any time when said survey is due, and the parcels have different owners, one owner may submit the survey for the other(s).~~

i. the name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LURU if said owner acquired any part of the Property during the previous calendar year; and

ii. the transferee's name, mailing address, telephone and facsimile numbers, and contact person's e-mail address, if said owner transferred any part of the Property during the previous calendar year.

iii. whether any vapor barrier and/or mitigation systems installed pursuant to subparagraph 11 above are performing as installed and certify they have not been modified, removed or compromised in any way, and whether the uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems have changed, and, if so, how.

In lieu of submissions of LURUs by particular owners, a property owners association or other entity may submit same on behalf of some or all owners of the Property, of said association or entity.